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[10191/1969]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

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In re Application of: : Examiner: Jeffrey R. West
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PELZ et al. :
:
For: SERVICE ELEMENT IN :
DISTRIBUTED SYSTEMS :
:
Filed: March 21, 2002 :
: Art Unit 8032
:
Serial No.: 09/913,992 :
:
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Mail Stop Appeal Brief - Patents
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Date: 25 July 2005

Signature: 
Michelle Carniaux (Reg. No. 36,098)

REPLY BRIEF TRANSMITTAL

SIR:

Accompanying this Reply Brief Transmittal is a Reply Brief pursuant to 37 C.F.R. § 41.41 for filing in the above-identified patent application, together with two courtesy copies thereof.

While no fee is believed to be due, the Commissioner is authorized to charge, as necessary and/or appropriate, any additional and appropriate fees or credit any overpayment to Deposit Account No. 11-0600. A duplicate copy of this transmittal letter is enclosed for that purpose.

Respectfully submitted,

Dated: 25 July 2005

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REMARKS

Claims 1 to 10 have been canceled.

Claims 11 to 14 and 17 to 20 stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,185,491 to Gray et al. ("Gray") in view of U.S. Patent No. 6,246,935 to Buckley et al. ("Buckley").

Claims 15, 16 and 21 stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over Gray in view of Buckley and U.S. Patent No. 6,330,499 to Chou et al. ("Chou").

Claim 22 stands finally rejected under 35 U.S.C. § 103(a) as unpatentable over Gray in view of Buckley and U.S. Patent No. 4,866,713 to Worger et al. ("Worger").

Claim 23 stands finally rejected under 35 U.S.C. § 103(a) as unpatentable over Gray in view of Buckley and U.S. Patent No. 4,843,557 to Ina et al. ("Ina").

For at least the reasons set forth below and in the Appeal Brief, the rejections of claims 11 to 23 should be reversed.

As set forth in the Appeal Brief, it is Appellants' position that Gray, Buckley, Chou, Worger and Ina, either alone or combined, do not disclose, or even suggest, a service element component having arrangements to upgrade and maintain other independent components of a distributed system, and to perform an emergency function, as recited in claims 11 and 19 (and included in claims 12 to 18 and 20 to 23 by virtue of their dependency of either claim 11 or 19).

In the Examiner's Answer, it is asserted that Fig. 6 and col. 5, lines 44 to 62 of Gray, which refer to buttons 910 and 920 of a touch screen interface 330 to adjust the volume, treble and bass of a CD player, or to perform channel selection of a AM/FM radio, disclose the features of claims 11 and 19 with respect to "an arrangement to maintain the other components" because such buttons allegedly maintain operation of the device at a selected setting. In this regard, the Answer asserts that it is reasonable to interpret the term "maintain" in this manner because the present application allegedly does not expressly define what it means to maintain a component or indicate which particular maintaining operations are carried out by the service element. However, such assertions fail to account for those instances where the present application clearly demonstrates examples of how the service element performs its maintenance functions. In particular, the present application provides, for example, that the service element checks the other components of the distributed system at regular intervals (See page 7, lines 6 to 8), or that the service element conducts an error diagnosis once a day or every week or once a month (See page 7, lines 14 to 19), or that the

service element monitors the availability of new software versions for each individual component of the distributed system (See page 7, lines 20 to 21). Accordingly, it is clear, even from just a cursory reading of the specification, that maintaining a component of a distributed system, as recited in claims 11 and 19, involves more than just a mere volume adjustment or channel selection. Indeed, those skilled in the art would understand after reading the entire specification that adjusting the volume of a CD player, or changing to a different radio station of an AM/FM radio, is not the same as maintaining these devices as part of distributed system.

The Answer further asserts that its interpretation of the claimed language is consistent with the general dictionary definition, which allegedly defines the term “maintain” as “to keep in an existing state.” However, the Answer has not clearly demonstrated how this alleged dictionary definition “to keep in an existing state” supports interpreting the term “maintain” as changing the volume of a CD player, for example. In particular, it is unclear how changing the volume of a CD player keeps it in its existing state. Indeed, it would seem that the purported definition leads to just the opposite conclusion - - that is, the existing state of the CD player changes when the volume is changed (e.g., the CD player operates with different electrical and acoustic properties). Moreover, such use of an unspecified dictionary without identifying the actual source or its publication date is improper since it unfairly leaves the Appellants without recourse to check its accuracy and/or validity, or the context in which the definition was presented.

The Answer further asserts that col. 3, lines 49 to 55 of Gray, which refer to devices involving “airbag activation”, “emergency rescue”, “alarms” and “anti-theft system”, disclose the features of claims 11 and 19 with respect to “an arrangement to perform an emergency function” because such devices are under the control of the vehicle control center. In particular, the Answer asserts that through such control the vehicle control center is performing an emergency function, and that this is apparent because if the vehicle control center were not present the emergency functions would not be performed. However, such assertions are clearly wrong, or at least unsupported, because (1) Gray does not discuss in any way how the vehicle control center controls these devices to perform an airbag activation, an emergency rescue, or anti-theft function, and (2) Gray does not state that the vehicle control center must be present or that the attached devices would not perform their functions if the vehicle control center were not present. Instead, Gray refers only to the use of JavaBeans to implement a device interface (i.e., a graphical user interface), which “provides user access to devices operating in the vehicle”. Gray Abstract, lines 2 to 4 (emphasis added).

Accordingly, no decision is made by the vehicle control center as to when, how or if a particular emergency function is performed. Moreover, the vehicle control center may have no a priori knowledge of the type of device being attached. See Gray, col. 8, lines 61 to 63.

The Answer further asserts that col. 4, line 65 to col. 5, line 6, and col. 6, lines 34 to 40 and 62 to 64 of Gray, which refer to the downloading of the most recent version of a manufacturer's device interface from a URL network address, and col. 9, lines 28 to 37 of Buckley, which refer to a firmware upgrade of system initialization software stored in a flash EEPROM residing on the microprocessor of a center instrument panel node (CIPN), disclose the features of claims 11 and 19 with respect to "an arrangement to upgrade the other components". However, such an assertion is clearly wrong because both Gray and Buckley fail to disclose a component that upgrades other independent components. That is, Gray and Buckley refer only to a download or firmware upgrade, which are received by a single component of the system but not distributed to the other components. In particular, in Gray the manufacturer's device interface is downloaded only to the vehicle control center and never transferred to any of the other devices. This makes sense because a device would presumably never need an interface to access itself. Likewise, in Buckley, any firmware upgrade of the system initialization software stored in the flash EEPROM of the microprocessor 502 of the CIPN 300 is localized to the CIPN 300 itself and not to other nodes. See, for example, Figure 5, and col. 3, line 12, which states that "[t]he microprocessor [is] resident in CIPN 300 (502 of Fig. 5) ...".

For the foregoing reasons and for the reasons more fully set forth in the Appeal Brief, it is respectfully submitted that the final rejections of the pending claims should be reversed.

Dated: 25 July, 2005

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